

Message Text

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ACTION SS-25

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O 061555Z DEC 74

FM AMEMBASSY GEORGETOWN

TO SECSTATE WASHDC IMMEDIATE 637

C O N F I D E N T I A L SECTION 1 OF 2 GEORGETOWN 2149

EXDIS

E.O. 11652: GDS

TAGS: EMIN EINV GY

SUBJECT: REYNOLDS GUYANA

DEPARTMENT PASS OPIC

SUMMARY: HUNT PLANS TO PRESENT FOLLOWING DRAFT AGREEMENT IN NEGOTIATIONS WITH GOG, PROBABLY THIS AFTERNOON. WILL BE IDENTIFIED AS PRELIMINARY DRAFT INTENDED TO FOCUS AND SPEED NEGOTIATIONS, AND TO PROVIDE FRAMEWORK IN WHICH GOG CAN MAKE ITS PROPOSALS ON BASIC FINANCIAL ASPECTS OF SETTLEMENT. END SUMMARY.

1. MINMINES JACK WAS URGED AT DEC. 5 MEETING NOT TO SIDETRACK OVERALL SETTLEMENT DISCUSSIONS THROUGH PRELIMINARY NEGOTIATIONS CONCERNING POSSIBLE EVERTON/KWAKWANI SPLIT, AND THAT IF GOG WANTS TO PURSUE THIS APPROACH IT SHOULD INCLUDE IT AS AN ALTERNATIVE PROPOSAL ALONG WITH ITS PROPOSAL BASED ON FULL NATIONALIZATION. IMPORTANCE WAS STRESSED BY HUNT OF SPELLING OUT BAUXITE PRICING FORMULA AS PART OF SUCH A PROPOSAL.

2. THE TEXT OF OPIC DRAFT AS FOLLOWS:

AGREEMENT

(PRELIMINARY DRAFT DECEMBER 6)

BETWEEN THE GOVT OF GUYANA (THE "GOVT") AND REYNOLDS METALS COMPANY ("REYNOLDS");

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WHEREAS THE COOPERATIVE REPUBLIC OF GUYANA ("GUYANA") INTENDS TO ACQUIRE THE ASSETS IN GUYANA OF REYNOLDS GUYANA MINES, LTD. ("REYNOLDS-GUYANA"), A WHOLLY OWNED SUBSIDIARY OF REYNOLDS, UNDER AUTHORITY OF THE BAUXITE NATIONALIZATION ACT OF 1971 (THE "ACT") AND TO TERMINATE ALL RIGHTS OF REYNOLDS UNDER THE AGREEMENT OF FEBRUARY 16, 1965; AND

WHEREAS THE PARTIES WISH TO PROVIDE BY AGREEMENT FOR THE COMPENSATION TO BE PAID ON ACCOUNT OF SUCH NATIONALIZATION ACTION AND FOR THE ADJUSTMENT OF RELATED MATTERS AS HEREIN SET FORTH;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. NATIONALIZATION ACTION. GUYANA WILL ACQUIRE ALL REYNOLDS-GUYANA ASSETS EXISTING IN GUYANA IMMEDIATELY PRIOR TO VESTING DAY EXCEPT PREPAID EXPENSES AND DEFERRED CHARGES. ALL RIGHTS, OBLIGATIONS AND LIABILITIES OF THE PARTIES UNDER THE FEBRUARY 16, 1965 AGREEMENT RELATING TO REYNOLDS' OPERATIONS IN GUYANA SHALL TERMINATE AS OF THE VESTING DATE AND NO CLAIM SHALL BE MADE WITH RESPECT TO SAID AGREEMENT EXCEPT AS BASED ON THE INSTANT AGREEMENT. THE VESTING DATE SHALL BE DECEMBER 31, 1974, AND THE CLOSING DATE SHALL BE THE SAME OR SUCH LATER DATE AS MAY HEREAFTER BE AGREED TO IN WRITING BY THE PARTIES.

2. COMPENSATION. THE BASIC COMPENSATION AMOUNT ON ACCOUNT OF THE NATIONALIZATION ACTION SHALL BE THE SUM OF DOLS-----US DOLLARS. AN ADJUSTED COMPENSATION AMOUNT, DETERMINED IN ACCORDANCE WITH THIS AGREEMENT, AND ANY INTEREST THEREON, SHALL BE PAID BY THE GOVT TO REYNOLDS IN THE UNITED STATES IN U.S. DOLLARS WITHOUT DEDUCTION OR LIABILITY FOR ANY TAXES OR LEVIES IN GUYANA.

3. ADJUSTMENT OF COMPENSATION.

A) THE BASIC COMPENSATION AMOUNT IS CALCULATED ON THE BASIS OF A BAUXITE INVENTORY VALUED AT US DOLS 1.7 MILLION. THE BAUXITE INVENTORY IS TO BE DETERMINED AT THE LATEST PRACTICABLE DATE PRIOR TO VESTING DATE, VALUED ON THE SAME BASIS USED BY REYNOLDS IN VALUING INVENTORY AS OF DECEMBER 31, 1973, AND THE BASIC COMPENSATION AMOUNT SHALL BE ADJUSTED ACCORDINGLY.

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B) THE BASIC COMPENSATION AMOUNT SHALL BE REDUCED BY A SUM
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EQUAL TO THE US DOLLAR EQUIVALENT OF FIFTY PERCENT OF ANY UNPAID AND UNRELINQUISHED BALANCE OWING ON ACCOUNT OF SEVERANCE PAY TO WORKERS TERMINATED BY REYNOLDS-GUYANA SUBSEQUENT TO SEPTEMBER 15, 1974.

4. TERMS OF PAYMENT. THE GOVT SHALL PAY FORTY PERCENT OF THE

ADJUSTED COMPENSATION AMOUNT ON CLOSING DATE AND SHALL PAY THE BALANCE IN TWENTY EQUAL SEMIANNUAL INSTALLMENTS COMMENCING JUNE 30, 1975, TOGETHER WITH INTEREST ON THE UNPAID BALANCE AT THE RATE OF TEN PERCENT PER ANNUM FROM JANUARY 1, 1975. ALL PAYMENTS REQUIRED TO BE MADE PURSUANT TO THIS PARA SHALL BE MADE BY DEPOSIT OF FREELY AVAILABLE U.S. FUNDS TO THE ACCOUNT OF REYNOLDS IN SUCH UNITED STATES BANK AS REYNOLDS SHALL DESIGNATE BY TIMELY WRITTEN NOTICE TO THE GOVT, EXCEPT TO THE EXTENT THAT THE DOWN-PAYMENT LIABILITY MAY BE DISCHARGED BY CREDITING AGAINST IT ANY NET PAYMENT DUE TO THE GOVT PURSUANT TO PARAS 7 AND 9 BELOW.

5. NOTES. THE GOVT SHALL ISSUE NOTES EVIDENCING THE DEFERRED PAYMENT OBLIGATION. SAID NOTES SHALL BE IN NEGOTIABLE FORM, FOLLOW THE GENERAL PATTERN OF NOTES GIVEN BY GUYANESE STATE CORPORATIONS IN THEIR EXTERNAL FINANCING TRANSACTIONS, AND SHALL BE ISSUED OR REPLACED IN DENOMINATIONS OF US DOLS 100,000 OR MORE AS REQUESTED BY REYNOLDS. (CONTINUED..)

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C O N F I D E N T I A L SECTION 2 OF 2 GEORGETOWN 2149

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6. PREPAYMENT. THE GOVT MAY PREPAY THE NOTES IN THEIR ENTIRETY AT ANY TIME PRIOR TO JUNE 30, 1975 BY PAYING NINETY-FIVE PERCENT OF THE PRINCIPAL AMOUNT PLUS ACCRUED INTEREST TO DATE OF PRE-PAYMENT.

7. PRODUCTION LEVY. REYNOLDS SHALL PAY THE GOVT AT CLOSING THE

SUM OF US DOLS-----LESS:

A) ANY PAYMENTS THERETOFORE MADE BY REYNOLDS ON ACCOUNT OF GUYANA INCOME TAX FOR THE CALENDAR YEAR 1974 (YEAR OF ASSESSMENT 1975);

B) ANY DUTY, EXPORT TAX, OR ROYALTY TAX PAYMENTS THERETOFORE MADE BY REYNOLDS TO GUYANA ON ACCOUNT OF BAUXITE MINED OR SHIPPED DURING 1974, AND;

C) ANY SUMS THERETOFORE PAID EITHER ON ACCOUNT OF THE PRODUCTION LEVY OR AS INTERIM PAYMENTS PURSUANT TO THE TRANSITION ARRANGEMENTS REFERRED TO BELOW.

8. PENSIONS. THE PARTIES SHALL PROMPTLY CONCLUDE ARRANGEMENTS FOR THE FUNDING OF RILA OBLIGATIONS THROUGH DEPOSITS IN GUYANA AND REYNOLDS SHALL, ON OR BEFORE CLOSING DATE, COMPLETE A DEPOSIT
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TOTALLING NOT LESS THAN US DOLS -----INTO AN ACCOUNT ESTABLISHED FOR SUCH PURPOSE.

9. PRIOR YEAR TAXES. THE GOVT SHALL REDUCE ITS CLAIM STATED IN TAX REASSESSMENT NOTICES AGAINST REYNOLDS-GUYANA DATED JULY -----
AND
-----IN 1974 BY THE AMOUNT OF US DOLS -----PLUS THE FULL AMOUNT DEPOSITED BY REYNOLDS TO FUND THE PENSION ACCOUNT REFERRED TO IN THE ABOVE PARA, AND SHALL REFUND TO REYNOLDS THE SUM OF THESE TWO ITEMS AT CLOSING DATE, WITH THE BALANCE OF THE FUNDS DEPOSITED BY REYNOLDS IN CONNECTION WITH ITS APPEAL OF THE ASSESSMENT TO BE CEDED TO THE GOVT.

10. ASSIGNMENT OF RIGHTS. THE RIGHTS OF REYNOLDS HERE-UNDER MAY BE ASSIGNED IN WHOLE OR IN PART AT ANY TIME, INCLUDING, WITHOUT LIMITATION, ANY ASSIGNMENT WHICH MAY BE MADE TO THE OVERSEAS PRIVATE INVESTMENT CORPORATION AS INSURER OF REYNOLDS.

11. TRANSITION ARRANGEMENTS. THE PARTIES BELIEVE THAT IT SHOULD BE POSSIBLE TO TAKE CERTAIN STEPS PERTAINING TO BAUXITE SHIPMENTS AND REINSTATEMENT OF WORKERS PRIOR TO THE VESTING DATE ON A BASIS THAT DOES NOT PREJUDICE THE LEGAL RIGHTS AND CONTENTIONS OF EITHER PARTY. A SEPARATE AGREEMENT PROVIDING FOR SUCH TRANSITION ARRANGEMENTS IS BEING ENTERED INTO BY THE PARTIES AS OF THE DATE OF THIS AGREEMENT.

12. CURRENCY. ANY SUMS EXPRESSED HEREIN IN US DOLLARS ON ACCOUNT OF WHICH PAYMENT IS TO BE MADE WITHIN GUYANA SHALL BE CONVERTED TO AND PAID AT THE GUYANA CURRENCY EQUIVALENT COMPUTED AT THE MEAN OF THE NOON RATES QUOTED FOR US DOLLARS BY THE COMMERCIAL BANKS IN GEORGETOWN ON THE BUSINESS DAY PRIOR TO THE DATE OF

PAYMENT.

13. CLAIMS. THE PARTIES AGREE THAT THE CLOSING OF THIS AGREEMENT SHALL DISCHARGE AND FORECLOSE ALL CLAIMS OF WHATEVER NATURE BETWEEN THEM, THEIR SUCCESSORS OR ASSIGNS IN ANY WAY RELATING TO THE NATIONALIZATION ACTION, TAXES, LEVIES OR OTHER ASSESSMENTS OF ANY CHARACTER ASSERTED BY THE GOVT WITH RESPECT TO THE OPERATIONS OF REYNOLDS-GUYANA EXCEPT FOR CLAIMS BASED UPON THE TERMS OF THIS AGREEMENT.

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14. DISPUTES. ANY DISPUTES ARISING HEREUNDER WHICH CANNOT BE SETTLED BY THE PARTIES SHALL BE SUBMITTED TO ARBITRATION IN ACCORDANCE WITH THE RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE. THE AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF ENGLAND AND THE ARBITRATION SHALL TAKE PLACE AT SUCH CARIBBEAN CAPITAL AS THE ARBITRATORS MAY SELECT WHICH HAS A LEGAL SYSTEM DERIVED FROM THE LAWS OF ENGLAND.

(END)

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